

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of Applications of)	
)	
NATIONAL SCIENCE AND TECHNOLOGY)	
NETWORK, INC.)	
)	
Informal Objection Filed by Mobile Relay)	File No. 0002919006
Associates)	
)	
Informal Objection field by Mobile Relay)	File No. 0002919011
Associates; Joint Request for Dismissal or Denial)	
Filed by Comm Enterprises, LLC, James A. Kay,)	
MS Airwaves, Inc., and Marc D. Sobel)	

ORDER ON RECONSIDERATION

Adopted: April 3, 2009

Released: April 6, 2009

By the Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* In this *Order on Reconsideration*, we address a petition (Petition)¹ filed on March 27, 2008 by National Science and Technology Network, Inc. (NSTN) for reconsideration of a March 14, 2008 *Order*.² The *Order* granted the informal objections of Mobile Relay Associates (MRA) and Comm Enterprises, LLC, James A. Kay, MS Airwaves, Inc., and Marc D. Sobel (Joint Petitioners) to NSTN's above-captioned February 20, 2007 applications to modify its license for Industrial/Business Pool Station WPM274 to, *inter alia*, add channels at Glendale, California (File No. 0002919006) and for a new license to operate on different frequencies at the Glendale location (File No. 0002919011).³ For the reasons stated below, we deny the Petition.

2. *Background.* NSTN sought authority to operate with a 12.5 kHz bandwidth on 12.5 kHz "offset" channels in the 470-512 MHz band. MRA and Joint Petitioners, which operate on 25 kHz channels on center frequencies 12.5 kHz removed from NSTN's requested frequencies, objected to NSTN's proposed operations on the grounds that NSTN did not satisfy the interference protection criteria of TIA/EIA/TSB-88 (TSB-88)⁴ and would cause them impermissible interference. The *Order* concluded that a TSB-88 analysis was required because there was spectral overlap between MRA's and Joint Petitioners' licensed operations and NSTN's proposed operations, and that NSTN's proposed operations

¹ Petition for Reconsideration (filed March 27, 2008) (Petition). Mobile Relay Associates filed an opposition on April 4, 2008. Comm Enterprises, LLC, James A. Kay, MS Airwaves, Inc., and Marc D. Sobel filed an opposition on April 9, 2008. NSTN did not file a reply.

² National Science and Technology Network, Inc., *Order*, 23 FCC Rcd 4096 (WTB MD 2008) (*Order*).

³ *Id.* at 4097 ¶ 8.

⁴ See Filing Freeze to Be Lifted for Applications under Part 90 for 12.5 kHz Offset Channels in the 421-430 and 470-512 MHz Bands, *Public Notice*, 13 FCC Rcd 5942, 5942 (WTB 1997) (citing Letter from Larry A. Miller, President, Land Mobile Communications Council (LMCC), to Daniel B. Phythyon, Esq., Acting Chief, Wireless Telecommunications Bureau (Sept. 10, 1997) (LMCC Consensus)). The LMCC Consensus provides that an application shall not be certified if an incumbent or the applicant has unacceptable interference of more than five percent reduction of the calculated service area reliability. See LMCC Consensus, Attachment at 2.

did not satisfy the TSB-88 criteria.⁵

3. The *Order* noted⁶ that NSTN's applications relied on a then-recent Mobility Division decision⁷ for the proposition that a TSB-88 study was not required for the proposed operations because there was no spectral overlap between the proposed facilities and the incumbent facilities, but that the Mobility Division had subsequently reversed that decision and explained that the earlier finding of no spectral overlap was based on a mathematical error.⁸ We note that the Mobility Division's recent *Order on Further Reconsideration* upheld the reversal of the original decision, and rejected a number of other arguments proffered by NSTN in defense of its applications to operate with a 12.5 kHz bandwidth on 12.5 kHz "offset" channels in the 470-512 MHz band on center frequencies 12.5 kHz removed from existing stations' center frequencies.⁹

4. *Discussion.* We conclude that the *Order* correctly found that there is spectral overlap from NSTN's proposed operations on 12.5 kHz offset channels (with an occupied bandwidths of 11.25 kHz) on center frequencies 12.5 kHz removed from MRA's and Joint Petitioners' 25 kHz channels (with an occupied bandwidth of 20 kHz).¹⁰ NSTN asserts that there is no spectral overlap because 25 kHz channels do not actually occupy 20 kHz.¹¹ The *Order on Further Reconsideration* rejected this argument, and we will not discuss it further.¹² NSTN also argues that its proposed operations should not be deemed to overlap MRA's and Joint Petitioners' spectrum because Section 90.187(b)(2) of the Commission's Rules¹³ affords protection only to stations with center frequencies 7.5 kHz or less removed from a proposed 12.5 kHz station.¹⁴ The *Order on Further Reconsideration* rejected this argument, and we will not discuss it further.¹⁵ NSTN claims that TSB-88 applies only to "radio systems where all parts of the affected systems transmit and receive on the same frequency," not to duplex systems where transmit and receive frequencies are separated.¹⁶ The *Order on Further Reconsideration* rejected this argument, and we will not discuss it further.¹⁷ NSTN also argues that the *Order* is not in the public interest and conflicts with the Commission's rules¹⁸ requiring 25 kHz private land mobile radio licensees to transition to more

⁵ See *Order*, 23 FCC Rcd at 4097 ¶¶ 4-5.

⁶ See *id.* at 4097 ¶ 4.

⁷ National Science and Technology Network, Inc., *Order*, 22 FCC Rcd 1953, 1954 n.10 (WTB MD 2007).

⁸ See National Science and Technology Network, Inc., *Order on Reconsideration*, 22 FCC Rcd 18644, 18646 ¶ 6 (WTB MD 2007).

⁹ See National Science and Technology Network, Inc., *Order on Further Reconsideration*, DA 09-663 (WTB MD rel. Mar. 24, 2009) (*Order on Further Reconsideration*).

¹⁰ See *id.* at ¶ 5.

¹¹ See Petition at 3.

¹² See *Order on Further Reconsideration* at ¶ 5.

¹³ 47 C.F.R. § 90.187(b)(2).

¹⁴ See Petition at 4.

¹⁵ See *Order on Further Reconsideration* at ¶ 6.

¹⁶ See Petition at 2.

¹⁷ See *Order on Further Reconsideration* at ¶ 7.

¹⁸ See 47 C.F.R. § 90.209(b)(5) n.3; Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended; Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies, *Second Report and Order and Second Further Notice of Proposed Rule Making and Order*, WT Docket No. 99-87, RM-9332, 18 FCC Rcd 3034, 3038 ¶ 12 (2003).

efficient equipment by 2013.¹⁹ The *Order on Further Reconsideration* rejected this argument, and we will not discuss it further.²⁰

5. Finally, we are unpersuaded by NSTN's claim that MRA and Joint Petitioners have no legitimate grievance because they have not experienced any harmful interference, and that they are abusing the Commission's adjudication process for anticompetitive reasons.²¹ As stated in the *Order*, our engineering staff's independent studies confirmed the results of MRA's and Joint Petitioners' interference studies that NSTN's proposed operations would not afford them the required degree of interference protection.²² That NSTN competes with these parties does not render their objections to NSTN's defective applications illegitimate.²³

6. In summary, the *Order* correctly found that NSTN was required to satisfy the interference protection criteria of TSB-88 because there is spectral overlap between its proposed operations and MRA's and Joint Petitioners' licensed operations. It correctly dismissed NSTN's application File No. 0002919011 in full, and application File No. 0002919006 in part, insofar as it sought to add frequency pairs 471/474.500 MHz, 472/475.000 MHz, and 472/475.375 MHz to locations 5, 14, and 15. Consequently, we deny the Petition.

7. Accordingly, IT IS ORDERED pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, that the Petition for Reconsideration submitted by National Science and Technology Network, Inc. on March 27, 2008 IS DENIED.

8. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Roger S. Noel
Chief, Mobility Division
Wireless Telecommunications Bureau

¹⁹ See Petition at 1-2.

²⁰ See *Order on Further Reconsideration* at ¶ 8.

²¹ See Petition at 4.

²² See *Order*, 23 FCC Rcd at 4097 ¶ 2.

²³ Moreover, NSTN makes no effort to explain why we should disregard its competitors' objections to NSTN applications, but accept NSTN's objections to MRA applications. See, e.g., *Mobile Relay Associates, Order*, DA 09-616 (WTB MD rel. Mar. 19, 2009); *Mobile Relay Associates, Order*, 23 FCC Rcd 4099 (WTB MD 2008); *Mobile Relay Associates, Memorandum Opinion and Order*, 23 FCC Rcd 3202 (2008). We remind counsel that an attorney may be subjected to appropriate disciplinary action pursuant Section 1.24 of the Commission's Rules, 47 C.F.R. § 1.24, for a willful violation of Section 1.52 of the Commission's Rules, 47 C.F.R. § 1.52, which provides that an attorney's signature on a pleading constitutes a certificate by him that there is good ground to support it, to the best of his knowledge, information, and belief. See *Mobile Relay Associates, Order on Reconsideration and Order Proposing Modification*, DA 09-619, n.15 (WTB MD rel. Mar. 19, 2009).